

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 03.07.2026
Pronounced on: 14.08.2026
Uploaded on: 14.08.2026

Whether the operative part or full
Judgment is pronounced: **Full**

Arb P No. 54/2024

Union of India,
Through the Executive
Engineer(c), CPWD Landoi
Bridge, Satwari Cantt. Jammu-
180003.

.... Petitioner(s)/Appellants

Through:- Mr. Vishal Sharma, DSGI with
Mr. Karan Sharma, CGSC.

V/s

M/S PNSC Infrastructure Pvt.
Ltd. Through its Director Shri
Purna Nand Ground Floor-
Property No. 13 PKT, E-4 Sector-
7, Rohini New Delhi-110085.

.....Respondent(s)

Through:- Mr. K. Nirmal Kotwal, Sr. Adv. with
Mr. Rajveer Singh Isher, Advocate.

CORAM: HON'BLE MR.JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner-Union of India has filed the instant petition for substitution of Arbitrator appointed by the Additional Director General (Jammu), CPWD in terms of order dated 14.03.2023.

Factual Matrix

2. It is stated that the respondent was awarded a contract for the work of “Construction of Transit Campus at IIT, Jammu (J&K) SH: Additional RCC Retaining Wall and structural steel works of Domes and Deck Bridge”, regarding which an agreement bearing No. 01/EE/JMCD/2017-18 was also executed between the parties. As certain disputes arose between the parties, the respondent sought reference of the disputes to arbitration in terms of Clause 25 of the General Conditions of Contract for Central P.W.D. Works, 2014 (GCC-2014). The Additional Director General (Jammu) CPWD, being appointing authority, vide Order dated 14.03.2023 appointed Sh. Akhilesh Kumar, as the Sole Arbitrator to adjudicate upon the 18 claims raised by the respondent.
3. It is further stated by the petitioner that the contract was awarded at Jammu, and the work was also to be executed at Jammu. The Arbitrator was appointed by the Additional Director General (Jammu), CPWD at Jammu. The contract between the parties was entered into in the year 2017 at Jammu, J&K. The arbitration clause contained in GCC-2014, provides that the arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996, or the Jammu and Kashmir Arbitration and Conciliation Act, 1997, as the case may be or any statutory modification or re-enactment thereof and the rules made thereunder for the time being in force. Thus, it is urged by the petitioner that after the repeal of the 1997 Act, the arbitral proceedings are required to be governed by statutory modification or re-enactment

thereof, which is the Arbitration and Conciliation Act, 1996, as applicable to the Union Territory of Jammu and Kashmir.

4. It is stated that the Arbitrator entered upon the reference on 17.03.2023 and invited the parties for a preliminary hearing to be held on 13.04.2023 at 12:00 hrs through Web Conferencing on Google Meet to decide the procedures to be followed under Section 19 of the Arbitration and Conciliation Act, 1996. In the morning of 13.04.2023 at 08:38:13 AM, Arbitrator sent an email attaching therewith the list of tentative points for discussion in the preliminary hearing scheduled for 13.04.2023. The preliminary hearing was held as scheduled on 13.04.2023, during which all issues proposed in the tentative list were discussed. In view of the technical complexities involved and the voluminous documentary record, the petitioner requested for physical hearings at Jammu and offered to render all necessary logistical assistance to the Arbitrator. However, the learned Arbitrator directed that all future hearings be conducted virtually via web-conferencing, reserving physical hearings only for unavoidable circumstances at a venue to be decided subsequently. After the conclusion of the hearing on 13.04.2023, the minutes of the proceedings were sent through email and the next hearing in the arbitral proceedings was held on 01.11.2023 through web conferencing and due to network issues, the petitioner was not satisfied with the conduct of hearing and after the meeting was over, the petitioner received the minutes of meeting through email and found that the points put forth did not find mention in the minutes of hearing dated 01.11.2023, so much so the Arbitrator was recording the

minutes of hearing by recording the consent of the petitioner on his own. The petitioner thereafter filed a detailed application dated 11.12.2023 requesting the Arbitrator to hold the subsequent proceedings physically at Jammu, citing the network issue as well as number of other reasons prejudicing the effective conduct of the proceedings. The petitioner submits that the appointment of a technical expert, specifically an engineer, as Arbitrator, along with holding of arbitration at Jammu, was intended to enable the Arbitrator to conduct on-site inspections of the construction works for an effective, spot assessment of the claims and counterclaim. In the hearing conducted on 11.12.2023, the learned Arbitrator recorded the petitioner's application requesting physical hearings and invited objections from the respondent. However, upon receiving the minutes of the hearing through email, the petitioner was surprised to find that the learned Arbitrator had unilaterally recorded the petitioner's alleged consent to proceed virtually, despite the petitioner having explicitly filed an application seeking physical hearings due to the practical difficulties encountered in virtual proceedings. Thereafter, vide order dated 25.12.2023, Arbitrator disposed of the petitioner's application for physical hearings by directing that future proceedings shall continue virtually, except where physical attendance becomes strictly unavoidable. In doing so, the learned Arbitrator relied upon observations of the Hon'ble Supreme Court regarding the beneficial use of technology, while failing to appreciate that virtual proceedings are inherently unsuited for arbitral matters involving extensive technical

complexities and voluminous documentary records. In the subsequent hearings, the petitioner again found that the Arbitrator was recording the minutes of the hearings arbitrarily and incorrectly, by recording the consent/confirmation of the petitioner without even asking the petitioner.

5. It is further stated that the Arbitrator failed to complete the proceedings and pass the award within statutory period of 12 months, his mandate expired on 16.03.2024 in terms of Section 29-A of Arbitration and Conciliation Act, 1996, as such, the petitioner intimated the Arbitrator through the medium of communication dated 10.05.2024 that his mandate stood expired and he has become functus officio, and the petitioner is not consenting to the extension of time for making the award. The Arbitrator invited objections to the said application from the respondent and vide order dated 16.05.2024, rejected the plea of the petitioner regarding termination of mandate on 16.03.2024 on the pretext that the pleadings in the case were completed on 12.09.2023 and in the minutes of hearing dated 13.04.2023, he has already held the seat of arbitration to be Delhi with the consent of the parties, as such, the provision of Section 29A(1) as applicable in Delhi will be applicable. It is urged by the petitioner that it was only after going through the order dated 16.05.2024, the petitioner for the first time realized that in the minutes of hearing dated 13.04.2023, the Arbitrator, arbitrarily and without the consent of the petitioner, had recorded that the seat of the arbitration shall be at Delhi, whereas the fact remains that the petitioner never consented for the same. The learned

Arbitrator's recording of the petitioner's alleged consent to fix the seat of arbitration at Delhi defies all logic and reason. Given that the contract was awarded and executed in Jammu, and the Arbitrator was appointed in Jammu under the provisions of the Arbitration and Conciliation Act, 1996, there was simply no occasion or justification for the petitioner to agree to shifting the seat of arbitration to Delhi. It is stated that this is an act of fraud on the part of Arbitrator which can be gathered from the fact that in the list of tentative points to be discussed on 13.04.2023, there was no point with respect to seat of Arbitration which is indisputably at Jammu, where the cause of action arose.

6. The respondent has filed the response and has raised preliminary objection with regard to the entertainability and maintainability of the present petition on the ground that this Court lacks territorial jurisdiction because as per the preliminary hearing held on 13.04.2023, the seat of Arbitration was fixed at Delhi with the mutual consent of the parties. It is also contended by the respondent that the mandate of learned Arbitrator is still in force as the date of appointment of Sole Arbitrator is 14.03.2013 and as per Arbitration and Conciliation Act, 1996, for completion of pleadings six months' time is required and the same were completed well within six months i.e. 12.09.2023 and after pleadings, 12 months is provided for arguments and for publication of award. Therefore, the mandate of the Arbitrator would expire on 11.09.2024. It is also stated that in terms order dated 23.04.2024, both the parties consented for extension of six months period as per Section 29A (3) of Arbitration and Conciliation Act, 1997, therefore, the

mandate of the Tribunal is still in place. It is stated that total 12 hearings have been conducted and 12th hearing was held on 22.05.2024 and the order was issued by the learned Arbitrator on 23.05.2024. The claimant's arguments remained un-concluded and with the consent of both the parties, the next date of hearing was fixed for 16.07.2024. The respondent has given the details of hearings conducted from 25.05.2023 till 15.05.2024. The respondent has denied that Arbitration and Conciliation Act, 1996, applicable specifically to Union Territory of Jammu and Kashmir under Section 29A will be applicable in the instant case as the Seat of the Arbitration is at Delhi. The respondent has in fact denied the grounds raised by the petitioner for appointment of substitute Arbitrator. It is further submitted that the petitioner never raised any connectivity or technical issues during the entire course of the proceedings. Furthermore, the learned Arbitrator never denied the petitioner an opportunity for physical hearings, provided a genuine need was established. Had the petitioner faced any legitimate difficulty, it ought to have recorded its objection upon issuance of the orders; however, the petitioner failed to do so. It is legally impermissible and improper for the respondent to resile from its express consent regarding the six-month extension of time, which was recorded during the hearing on April 20, 2024, and formally embodied in the procedural order dated April 23, 2024. Had there been any bona fide error in recording its consent for the extension of time, the respondent would have promptly brought the same to the attention of the learned Arbitrator immediately upon issuance of the procedural order.

Submissions:

7. Mr. Vishal Sharma, learned DSGI has submitted that procedural order dated 13.04.2023 itself clearly demonstrates the Arbitrator's questionable conduct. In the initial tentative points for discussion, no reference was made to fixing Delhi as the seat of arbitration. On the contrary, Serial No. 24 of the tentative points expressly provided that the proceedings would be concluded from the date the Sole Arbitrator enters upon the reference, a stipulation made strictly in the context of Section 29-A(1) of the Arbitration and Conciliation Act, as applicable to the Union Territory of Jammu and Kashmir. He further submitted that under the procedural order dated 13.04.2023, the seat of arbitration was designated as Delhi without the petitioner's consent. Concurrently, however, the Arbitrator applied Section 29-A of the Act as applicable to Jammu and Kashmir to govern the timeline of the proceedings, reflecting a contradictory and fraudulent approach. He also highlighted that despite the petitioner filing an application requesting physical hearings, the Arbitrator wrongly recorded in a subsequent order that both parties were satisfied with virtual hearings through video conferencing and faced no difficulty during the proceedings. Finally, it was submitted that had Section 29-A of the Act as applicable to the rest of India been governing the present matter, there would have been no requirement for the parties to formally record their consent to extend the Arbitrator's mandate.
8. Per contra, Mr. Nirmal K Kotwal, learned Senior counsel appearing for the respondent has submitted the seat of arbitration was fixed at Delhi

with the mutual consent of the parties. Consequently, this Court lacks the requisite territorial jurisdiction to entertain the present petition. He further contended that the petitioner's plea of being unaware that Delhi was designated as the seat, attributing this to an oversight in examining the procedural order/minutes dated April 13, 2023, is merely a lame excuse. It was also submitted that the Arbitrator had, in fact, permitted physical hearings, rendering the petitioner's claim that its request for a physical hearing was rejected entirely incorrect. He emphasized that had the petitioner harboured any genuine grievance regarding the learned Arbitrator's conduct, it would not have consented to extending the Arbitrator's mandate. In any event, such consent was legally redundant, as the pleadings were finalized only on September 12, 2023, and the statutory period had not expired. Finally, he drew the Court's attention to the record of proceedings conducted by the Arbitrator to demonstrate that the entire narrative advanced in the present petition is an afterthought.

9. Heard learned counsel for the parties and perused the record.

Appreciation:

10. Respondent has raised the preliminary objection that as the seat of Arbitration has been fixed at Delhi, with the mutual consent of the parties, this Court lacks jurisdiction to entertain this petition.
11. The petitioner seeks the substitution of the Sole Arbitrator primarily on the ground that the Arbitrator fraudulently designated Delhi as the seat of arbitration, despite the petitioner never having consented to such an arrangement. Specifically, in paragraph 15 of the petition, it is

explicitly pleaded that the fixing of the seat of arbitration at Delhi constitutes an act of fraud on the part of the Arbitrator.

12. It is the petitioner's contention that since the work was allotted, executed, and the Arbitrator appointed at Jammu, the Arbitration and Conciliation Act, 1996, as applicable to the Union Territory of Jammu and Kashmir, governs the matter. Strangely, as noted in paragraph 7 of the petition, the petitioner admits to having received the procedural order dated 13.04.2023 on the very same day. However, the petitioner seeks to dispute the minutes of the proceedings conducted on 13.04.2023, contending that the tentative points for discussion did not contain any reference to fixing Delhi as the seat of arbitration. Further, item No. 24 of the tentative points clearly demonstrates the learned Arbitrator's intention to apply Section 29-A of the Act as applicable to Jammu and Kashmir, as it specifically stipulated that the arbitral proceedings would be concluded within the prescribed period calculated from the date on which the learned Sole Arbitrator entered upon the reference.
13. Surprisingly, the similar provision was retained in the minutes of the proceedings dated 13.04.2023 but the fact remains that at Serial No. 19 of the minutes of the proceedings, it is specifically mentioned that *"with the consent of both the parties, it was decided that the Seat of Arbitration, shall be at Delhi"*.
14. In paragraph 15 of the petition, the petitioner asserts that it was only upon perusal of the order dated 16.05.2024, that it realized, for the first time, that the Arbitrator had recorded in the procedural minutes dated

13.04.2023, that the seat of arbitration shall be at Delhi, an incorporation the petitioner claims was made fraudulently and without its consent. While this Court refrains from commenting on the plausibility of the petitioner acquiring knowledge of the minutes dated 13.04.2023 only on May 16, 2024, the undisputed fact remains that the petitioner continued to participate in the proceedings before the Arbitrator for over a year.

15. Prima facie, this Court is of the view that, since the seat of arbitration was designated as Delhi, notwithstanding the petitioner's belated dispute in this regard, it would be appropriate for the present controversy to be adjudicated by the Court having jurisdiction in accordance with the designated seat of arbitration.
16. In **"Indus Mobile Distribution Pvt. Ltd Vs. Datawind Innovation Pvt. Ltd"**, AIR 2017 Supreme Court 2105, the Hon'ble Apex Court has held as under:

"20. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction - that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties."

(emphasis added)

17. In “**Inox Renewables Limited vs. Jayesh Electricals**”, 2023 (3) SCC

733, the Hon’ble Apex Court has held as under:

“17. The reliance placed by learned counsel for the Respondent on Indus Mobile (supra), and in particular, on paragraphs 18 and 19 thereof, would also support the Appellant’s case, inasmuch as the “venue” being shifted from Jaipur to Ahmedabad is really a shifting of the venue/place of arbitration with reference to Section 20(1), and not with reference to Section 20(3) of the Arbitration and Conciliation Act, 1996, as it has been made clear that Jaipur does not continue to be the seat of arbitration and Ahmedabad is now the seat designated by the parties, and not a venue to hold meetings. **The learned arbitrator has recorded that by mutual agreement, Jaipur as a “venue” has gone and has been replaced by Ahmedabad. As clause 8.5 of the Purchase Order must be read as a whole, it is not possible to accept the submission of Shri Malkan that the jurisdiction of Courts in Rajasthan is independent of the venue being at Jaipur. The two clauses must be read together as the Courts in Rajasthan have been vested with jurisdiction only because the seat of arbitration was to be at Jaipur. Once the seat of arbitration is replaced by mutual agreement to be at Ahmedabad, the Courts at Rajasthan are no longer vested with jurisdiction as exclusive jurisdiction is now vested in the Courts at Ahmedabad, given the change in the seat of arbitration.**”

(emphasis added)

18. This Court could entertain the petitioner’s prayer for the appointment of a substitute arbitrator only if it were to hold that the seat of arbitration is located at Jammu. However, given the serious dispute between the parties concerning the designated seat of arbitration, this Court is of the considered view that adjudicating upon the merits of the petitioner’s contentions would implicitly amount to rendering a finding that the seat of arbitration was indeed Jammu, a premise this Court cannot assume without usurping jurisdiction.

19. In view of the above, without commenting upon the merits of the claims of the respective parties, this Court deems it proper to return the present petition to the petitioner to present it before the competent

Court having jurisdiction to determine the controversy raised in the present petition in view of prima facie finding returned by this Court that seat of arbitration has been fixed at Delhi.

20. **Disposed of.**

(Rajnish Oswal)
Judge

JAMMU
14.08.2026
Neha-1

Whether the order is speaking:	Yes.
Whether the order is reportable:	Yes.